

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

LYE HUAT ONG

:

v.

:

CIVIL ACTION NO. JFM-07-2273

RODERICK R. SOWERS

:

and

THE ATTORNEY GENERAL OF

:

THE STATE OF MARYLAND

:

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MEMORANDUM

This matter is before the court on Lye Huag Ong's pro se application for a writ of habeas corpus under 28 U.S.C. §2254. Ong challenges his convictions in 1998 in the Circuit Court for Anne Arundel County for second and third degree sexual offenses, child abuse, and perverted practice. Although Ong has neither paid the filing fee nor moved to proceed in forma pauperis, the court will grant him leave to proceed in forma pauperis for the limited purpose of preliminary review of the petition. The court will dismiss the petition without prejudice for lack of jurisdiction.

Background

On March 10, 2006, Ong challenged his convictions in a 28 U.S.C. §2254 petition for writ of habeas corpus. On September 8, 2006, this court dismissed the petition as time-barred. *See Ong v. Sowers*, Civil Action No. JFM-06-720 (D. Md). Recently, the United States Court of Appeals for the Fourth Circuit denied Ong's motion for a certificate of appealability and dismissed his appeal. *See Ong v. Sowers*, 2007 WL 2348665 (4th Cir. August 15, 2007).¹

¹ Ong's first §2254 petition in this court was dismissed without prejudice for failure to demonstrate exhaustion of state court remedies. *See Ong v. Sacchet*, et al., Civil Action No. JFM-03-0572 (D. Md.).

Analysis

Under these facts, the instant pleading is a second or successive 28 U.S.C. §2254 petition. Second or successive petitions under section 2254 may not be filed absent leave to do so from the Court of Appeals. See 28 U.S.C. §2244(b). As Ong has previously sought relief under 28 U.S.C. §2254, this court is without jurisdiction to consider another such request unless directed to do so by the United States Court of Appeals for the Fourth Circuit. See Evans v. Smith, 220 F.3d 306, 325 (4th Cir. 2000). Ong does not demonstrate that he obtained Fourth Circuit authorization prior to filing this action. For this reason, the court lacks jurisdiction to consider this petition.

The United States Court of Appeals for the Fourth Circuit has published instructions for filing to obtain authorization. Accompanying this memorandum is a packet of instructions published by the Fourth Circuit which addresses the comprehensive procedure to be followed to seek authorization to file a successive §2254 motion. It is to be emphasized that a petitioner must obtain permission from the Fourth Circuit to file his successive petition before this district court may examine his claims.

Conclusion

Ong does not demonstrate that he has obtained authorization for this court to consider the instant second or successive §2254 petition. Accordingly, the court will dismiss the petition without prejudice. A separate order follows.

September 4, 2007
Date

/s/_____
J. Frederick Motz

United States District Judge